

### **Remarks**

Claims 35-86 are pending in this application. Claims 55-68 and 70-86 are withdrawn from consideration. Claims 35-54 and 69 are rejected. No new matter is added by this amendment.

### **Submission of Sequence Listing and CRF in compliance with 37 C.F.R. §§ 1.821-1.825**

In compliance with 37 C.F.R. §§ 1.821-1.825, a computer readable form (CRF) copy of the sequence listing and a paper copy, which are amended to include sequences depicted in Figures 2, 3, 6 and 7 of the application, are submitted herewith along with a statement under 37 C.F.R. § 1.821. Accordingly, the Brief Description of the Drawings is amended to include sequence identifiers as indicated above in the Amendments to the Specification.

### **Information Disclosure Statement**

Applicant thanks the Examiner for his careful consideration of the information disclosure statements submitted March 5, 2001; October 15, 2001; March 1, 2002; April 21, 2003; July 23, 2003; and February 13, 2004.

### **The claims are not anticipated by Schmaljohn.**

Claims 35, 37-43, 45, 46 and 49-54 were rejected under 35 U.S.C. § 102(e) as anticipated by Schmaljohn (USPN 6, 258,788). The effective filing date of Schmaljohn is November 20, 1997. Applicant respectfully submits that he invented the subject matter of the claimed invention prior to November 20, 1997. A Declaration under 37 C.F.R. § 1.131 attesting to the fact that Applicant invented the subject matter prior to the date on which Schmaljohn became available as a reference under 35 U.S.C. § 102(e) is submitted herewith, along with Exhibits A and B providing evidence of this fact.

In light of Applicant's prior invention of the subject matter of claims 35, 37-43, 45, 46 and 49-54, Applicant requests that this rejection be withdrawn.

**The claims are not obvious in light of Schmaljohn or Schmaljohn and Kochel.**

Claims 69 and claims 36, 44, 47 and 48, were rejected as obvious under 35 U.S.C. § 103(a) in view of Schmaljohn, and Schmaljohn in combination with Kochel *et al.* (USPN 6,455,509), respectively. In light of the fact that Applicant invented the subject matter of claims 36, 44, 47, 48 and 69 prior to the date on which Schmaljohn became available as a reference, the rejection is rendered moot, and the rejection should be withdrawn.

**Non-Statutory Double Patenting**

Claims 35-45 and 69 were provisionally rejected over later filed United States application number 09/826,115 (“the ‘115 application”). The ‘115 application is a later filed continuation-in-part of the subject application (number 09/701,536). As this is a provisional rejection with respect to a later filed application, Applicant respectfully defers responding to this rejection until such time that the claims of the ‘115 application issue.

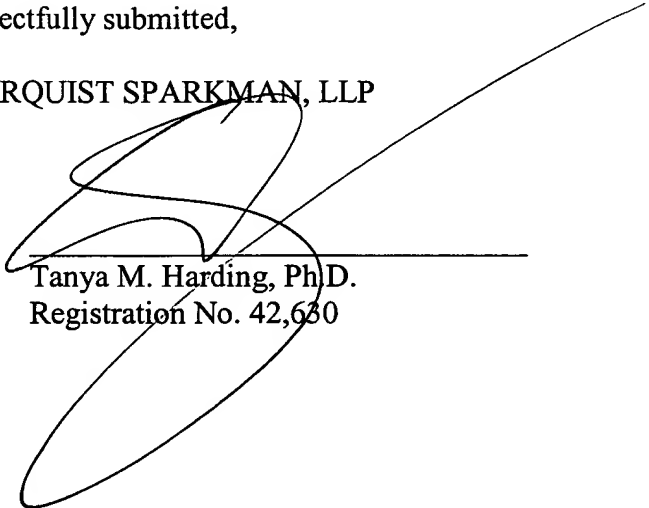
**Conclusion**

The Examiner is invited to telephone the undersigned if any questions remain concerning the amendments made herein. Otherwise, Applicant believes the present application is in condition for allowance, and such action is requested.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By



Tanya M. Harding, Ph.D.  
Registration No. 42,630

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 226-7391  
Facsimile: (503) 228-9446